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To: U.S. Patent and Trademark Office – **From:** Christian R. Andersen
Examiner: Steven H.D. NGUUEM   Sr. Paralegal – Intellectual Property
Group Art Unit: 2665

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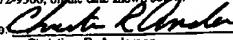**1) Supplemental Appeal Brief.**

Title: **INTERNET LONG DISTANCE TELEPHONE SERVICE**
Serial No.   **09/514,371**
Filing Date: **February 28, 2000**
First Named Inventor: **CURRY**
Atty. No.   **00-VE22.07A**

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Attorney Docket No.: 00-VE22.07A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Curry, et al.

Serial No.: 09/514,371

Filed: February 28, 2000

For: **INTERNET LONG DISTANCE TELEPHONE SERVICE**

Attorney Docket No.: 00-VE22.07A

Group Art Unit: 2665

Examiner: Nguyen, Steven H.D.

SUPPLEMENTAL APPEAL BRIEF

Mail Stop Appeal Brief- Patents
Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a Supplemental Appeal Brief under 37 C.F.R. § 1.192 and §1.193(b)(2)(ii) requesting reinstatement of the Appeal in response to the non-Final rejection of the Primary Examiner dated September 7, 2004 ("September 2004 Office Action"). Accordingly, reinstatement of the Appeal is respectfully requested. Each of the topics required by 37 C.F.R. § 1.192 is presented in this Brief and is labeled appropriately.

This application was filed on February 28, 2000. This appeal is from the decision of the Primary Examiner in the September 2004 Office Action, reopening prosecution and rejecting claims 1-10, 12-22 and 28-37. Applicants (hereinafter "Appellants") had previously filed a Notice of Appeal on April 1, 2004, and an Appeal Brief on May 28, 2004, appealing the decision of the Primary Examiner dated October 22, 2003 ("October 2003 Office Action") finally rejecting claims 1-10, 12-22 and 28-37. The claims on Appeal are listed in Section X of the Appeal Brief, incorporated by reference into Section X below of this Supplemental Appeal Brief.

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In the October 2003 Office Action, claims 1-10, 12-19, and 30-37 were rejected as being obvious under 35 U.S.C. §103(a) in light of various combinations of US 6,243,373 ("Turock"), US 6,298,057 ("Guy"), US 5,483,587 ("Hogan"), and US 6,304,567 ("Rosenberg"). Further in the October 2003 Office Action, claims 20-22 and 28-29 were rejected as being obvious under 35 U.S.C. §103(a) in light of the combination of FRC 1798 – "INETPhone: Telephone Services and Servers on Internet" by Yang ("Yang"), Guy, Hogan, and Rosenberg. The September 2004 Office Action maintained the afore-mentioned rejection of claims 1-10, 12-19, and 30-37, but newly rejected claims 20-21 and 28-29[1] as unpatentable over Turock in view of Hogan, Guy, and Rosenberg.

This Supplemental Appeal Brief addresses the new grounds of rejection set forth in the September 2004 Office Action. Pursuant to MPEP § 1208.02, Appellants have below incorporated herein portions of the Appeal Brief that are still considered to be relevant to this appeal. Submitted herewith are two additional copies of this Supplemental Appeal Brief.

I. REAL PARTY IN INTEREST

Section I of the Appeal Brief is fully incorporated herein by reference.

II. RELATED APPEALS AND INTERFERENCES

Section II of the Appeal Brief is fully incorporated herein by reference.

III. STATUS OF CLAIMS

Section III of the Appeal Brief is fully incorporated herein by reference.

IV. STATUS OF AMENDMENTS

Section IV of the Appeal Brief is fully incorporated herein by reference.

V. SUMMARY OF THE INVENTION

Section V of the Appeal Brief is fully incorporated herein by reference.

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[1] The September 2004 Office Action does not mention claim 22. For purposes of this Supplemental Appeal Brief, Appellants assume that claim 22 stands rejected as obvious over Turock in view of Hogan, Guy, and Rosenberg.

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VI. ISSUES

Section VI of the Appeal Brief is fully incorporated herein by reference.

VII. GROUPING OF CLAIMS

Section VII of the Appeal Brief is fully incorporated herein by reference.

VIII. ARGUMENT

A.   Background

The Examiner has rejected all of the pending claims, except Claim 11. Claims 1-10, 12-22 and 28-37 are rejected as being obvious under 35 U.S.C. §103(a) in light of various combinations of Turock, Guy, Hogan, and Rosenberg. The Examiner has indicated that Claim 11 would be allowable if re-written in independent form.

The primary reference relied on by the Examiner in rejecting claims 1-10, 12-19, and 30-37 is Turock. Turock discloses a system whereby a first party can use a conventional telephone to call a second party, wherein the audio information conveyed between the two parties is transferred over the Internet. (Turock, Abstract.) Turock requires a user to dial the number of a first ITS (Internet Telephony Server) node, which then prompts the user for the number that the user wishes to call. (Turock, 6:36-48.) The first ITS node then connects the call to a second ITS node, which in turn connects the user to the called party. (Turock, 5: 43-46.) The first ITS node uses a Least Cost Routing (LCR) Module "to locate the ITS node that can route the call at the receiving end in the most cost efficient manner." (Turock, 9: 27-30.) In other words, the LCR Module determines how to route the call at the time the call is made, and does not use a predetermined path. (Turock, 12: 41-44.) Significantly, the level of service to be provided is not a factor in determining how to route a call in Turock, which teaches simply that quality techniques may or may not be applied to a call, once a network path has been determined and a connection has been established. (Turock, 13: 13-17.) In fact, Turock teaches applying techniques to improve voice quality *after* a call has been routed. (Turock, 12: 12-24.)

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The Examiner has used Guy as a secondary reference in rejecting claims 1-10, 12-19, 20-22, 28-29, and 30-37. Guy is directed toward transmitting voice and data signals from a conventional telephone across a network. (Guy, 3: 39-56; 4: 54-67.) Guy teaches that bandwidth is allocated for a call (Guy: 11: 52-63), but does not teach any method for determining how the call is to be routed, or that a specific route or path is predetermined for the call.

Further, the Examiner has used Rosenberg as a secondary reference in rejecting claims 20-22 and 28-34. Rosenberg teaches multiplexing voice communications signals onto the Internet (Rosenberg, Abstract) using Internet telephone gateways (ITGs) to connect the telephone system to the Internet. (Rosenberg, 3: 13-22.) Rosenberg teaches opening and maintaining connections through which a call may be sent. (Rosenberg, 5: 44-47.) Rosenberg also teaches a channel ID associated with these connections, and further teaches that "channel IDs will be re-used as various users initiate and terminate their telephone calls." (Rosenberg, 5: 45-47.)

B. Claims Rejected as Unpatentable Over Turock In View Of Guy

Claims 1-7, 17-19, and 35-37 were rejected in the September 2004 Office Action as being unpatentable over Turock in view of Guy. Because the combination of Turock and Guy fails to teach the claim limitations discussed below, claims 1-7, 17-19, and 35-37 are in condition for allowance, as are claims 8-16, each of which depends directly or indirectly from one of claims 1-7.

1. Issue No. 1: Lack of Motivation to Combine Turock and Guy

Independent claim 1 recites "allocating a resource on the wide area packet switched network sufficient to provide a guaranteed level of service through the wide area packet switched network". Claim 1 further recites "selectively establishing a communication link, via the resource at at least the guaranteed level of service, between the first telephony server and the second telephony server through the wide area packet switched network, to establish communication between the calling and called parties." The October 2003 Office Action (page 3) and the September 2004 Office Action (page 4)

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each admits that Turock does not teach these claim limitations. However, the Examiner maintains that these limitations would have been obvious over Turock in view of Guy.

In fact, the Examiner has shown no motivation to combine Turock and Guy, and the September 2004 Office Action states none. The October 2003 Office Action (page 11) makes the argument that

> Turock clearly suggests that one of ordinary skill in the art would apply a number of different techniques to improve voice quality in the call setup message. Guy discloses a method for improving the quality of the voice signal by allocating the bandwidth along a predetermined path between the gateways for routing the voice path by using a RSVP [resource reservation protocol]. Therefore, it would have been obvious to one of ordinary skill in the art to apply the teaching of Guy into Turock's system in order to obtain a quality voice signal at the destination as claimed [in claims] 1-7, 17-19 and 35-37.

The Examiner's statement gives no reason for one of ordinary skill in the art to have applied the technique allegedly taught in Guy to Turock's "call setup message", but rather simply asserts that it would have been obvious to do so. Moreover, one of ordinary skill in the art would not have understood Turock and Guy to have been capable of the combination asserted by the examiner, because Turock's "different techniques to improve voice quality in the call setup message" are applicable to a connection that has been established between two points in a network, whereas Guy's "method for improving the quality of the voice signal" is applied *before* any connection is established.

The Advisory Action mailed January 16, 2004 further explains that the Examiner is relying on the following statement in Turock to establish a motivation to have combined Turock and Guy: "Line Quality Monitor or LQM 522 examines the sampled voice data and applies a number of different techniques to improve the voice quality." (Turock, 12: 12-14.) Inasmuch as Turock suggests neither "allocating a resource on the wide area packet switched network sufficient to provide a guaranteed level of service", nor "selectively establishing a communication link, via the resource at least the guaranteed level of service", Turock would not suggest the limitations of claim 1 even if that reference did suggest "a number of different techniques to improve voice quality." Turock's Line Quality Monitor simply is not directed towards improving *network*

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performance. Thus, the examiner's statement, when placed in context, makes clear that Turock supplies absolutely no suggestion to combine with Guy.

Instead, Turock teaches use of data compression to conserve network resources "during periods of high volume traffic." (Turock, 11: 51-62.) In fact, data compression is the exclusive means taught by Turock for enhancing the performance of network resources. (Turock, 10:29-33.) However, Turock also notes that as the data compression ratio increases, audio quality may decrease. (Turock: 11: 62-64, 12: 9-10.) Therefore, Turock's Line Quality Monitor uses "a number of different techniques", such as an echo cancellation filter" or "variable attenuation", to improve audio quality. (Turock, 12: 12-17.)

Turock makes clear that its Line Quality Monitor has absolutely nothing to do with "allocating a resource on the wide area packet switched network sufficient to provide a guaranteed level of service" or "selectively establishing a communication link". Turock explains that at least variable attenuation "only needs to be applied to the voice data one time between the two endpoints". (Turock, 12: 19.) That is, Turock's teaching is directed towards a network path that has *already been established*. Turock teaches, at most, improving the quality of a particular audio communication, and contains no teaching or suggestion regarding allocating resources on a network to provide a guaranteed level of service. One of ordinary skill could have taken no suggestion about how to improve network performance by allocating resources on a network from a teaching directed to improving audio quality between two endpoints that have already been established.

For at least the foregoing reasons, claim 1, as well as claims 2-19 depending therefrom, are patentable.

2.   Issue No. 2: "Predetermined Communication Path" (Claims 2-4, 17, 19, and 35-37)

Claims 2-4, 17, 19, and 35-37 all recite a "predetermined communication path." The October 2003 Office Action (pages 3-4, 11) and the September 2004 Office Action (pages 4-5) assert that both Turock and Guy teach the recited "predetermined communication path." In fact, Turock clearly does not teach the recited limitation, nor

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does Guy. Moreover, as noted above, even if Guy did teach a "predetermined communication path", no motivation exists to modify Turock with such a teaching.

The Examiner's position (October 2003 Office Action, page 11) is that "Turock discloses a routing and administration server for storing the routing path between the gateways such as LCR [Least Cost Routing]." However, with respect to its LCR module, Turock simply states that

> Before establishing an Internet voice connection, ITS Node 206 utilizes Least Cost Routing (LCR) module 514 in order to locate the ITS Node that can route the call at the receiving end in the most cost efficient manner. To perform this function, LCR 514 first matches the characteristics of the destination telephone number (called party telephone number) with data stored in a local database. . . . After searching the database, LCR 514 indicates the optimal location of the receiving ITS Node for processing the particular call. Additionally, the above database may also include alternate ITS node information so that *LCR 514 may also provide CIM 514 with the next most optimal ITS Node, and so on, so that if the optimal ITS Node is unavailable or cannot handle the call, CIM 510 can then attempt to place the call using the next most optimal receiving ITS Node.* (Turock, 9:27-54; emphasis added.)

In short, Turock does not determine ahead of time any particular path through the Internet that data packets will take to travel between the calling party's ITS server and the called party's ITS server. Turock clearly requires determining a communication path when a call is placed, as opposed to using a *predetermined* path when placing a call. Indeed, as the statement emphasized above makes clear, Turock teaches away from the concept of a predetermined communication path because in teaching that the LCR will attempt to use a succession of possible receiving ITS nodes, Turock teaches that a communication may travel over more than one possible path. In Turock, the communication path cannot be predetermined, because otherwise the LCR could not use the most optimal ITS node available as taught.

The Examiner has also taken the position, without any explanation or citation, that "Guy discloses that a gateway obtains a routing path from a routing and administration server and send[s] a call setup for allocating the bandwidth for the call between the gateways via a predetermined path between the gateways." (October 2003 Office Action, page 11.) However, in asserting that Guy teaches a predetermined communication path, the Examiner has imported into Guy a teaching that this reference simply does not

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contain. Guy simply makes no mention or suggestion of a predetermined communication path, the Examiner's assertion notwithstanding. Guy teaches no more than using the RSVP protocol for "reserving bandwidth across the WAN 104" after identifying merely "the *amount* of bandwidth to be reserved", and makes absolutely no teaching of a predetermined communication path. (*See* Guy 11: 45-63; emphasis added.) Allocating bandwidth is clearly different from using a predetermined communication path, and in fact Guy teaches against a predetermined communication path inasmuch as Guy teaches bandwidth being allocated *as a call is made*. (*See* Guy, Fig. 5.)

Moreover, even if Guy did teach a predetermined communication path, the Examiner has stated absolutely no motivation for one of ordinary skill in the art to have modified Turock with such a teaching from Guy. In fact, as noted above, both Turock and Guy actually teach away from a predetermined communication path. Clearly, it would not have been obvious to have modified either Turock or Guy to implement this limitation.

For at least these additional reasons, pending claims 2-4, 7, 17, 19, and 35-37 are allowable over the cited prior art.

3.   Issue No. 3: "Routing and Administration Server"

Claims 2 and 37 each recites "sending a routing request via the wide area packet switched network from the first telephony server to a routing and administration server having said routing and administration database." Turock does not teach a "routing and administration server having said routing and administration database" and that the routing and administration server provides a routing response "via the wide area packet switched network..." Claims 2-4 and 37 clearly recite that the routing and administration database is maintained on a server located at a node on the wide area network that is different from the separately-recited "first telephony server," a difference that Turock does not teach or suggest.

The Examiner identifies Turock's Least-Cost Routing (LCR) module 514 as the "routing and administration database." (October 2003 Office Action, page 3; *see also id*, page 11; September 2004 Office Action, page 4.) As Appellants argued in papers filed August 11, 2003 and December 22, 2002, Turock's LCR module resides in the telephony

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server ITS node 206, which corresponds to the first telephony server recited in claims 2-4 and 37. (*E.g.*, Turock 6: 28-43; *compare* ITS node 206 in Figures 2 and 5.) Therefore, Turock's LCR module cannot be said to be a routing and administration "server" that is separate from the "first telephony server", *i.e.*, ITS node 206. Moreover, because Turock's LCR module resides in the ITS node 206, it is impossible for the first telephony server, *i.e.*, Turock's ITS node 206, to receive a routing response from the LCR "via the wide area packet switched network", as recited in claims 2-4 and 37. In sum, in reciting a routing and administration database on a server separate from the first telephony server, claims 2-4 and 37 contain clear structural differences from the prior art of record.

For at least these reasons, claims 2-4 and 37 are allowable over the cited prior art.

4.   Issue No. 4: "Guaranteed Level of Service"

Claim 5 depends from claim 1 and further recites that "the identifying step comprises accessing said routing and administration database within said first telephony server to obtain the identity of said second telephony server and the guaranteed level of service corresponding to the calling party." That is, a guaranteed level of service parameter corresponding to a calling party is stored in the routing and administration data base on the first telephony server, and the stored guaranteed level of service parameter is retrieved from the database when a call is initiated. Page 11 of the October 2003 Office Action asserts that Guy (col. 11, line 45 – col. 12, line 21) contains the afore-described teaching. However, a careful reading of the cited section of Guy yields no support for the Examiner's assertion.

As noted above, Guy cannot be said to teach a routing and administration server as recited in Appellants' claims. The Examiner offers no explanation as to why he believes that Guy teaches Appellants' claim limitations, but may rely on Guy's statement that a "priority management unit" is used "to request a reservation of bandwidth across the WAN." (Guy, col. 11, lines 60-61.) The Examiner appears to equate Guy's request for a reservation of bandwidth with obtaining a guaranteed level of service from a routing and administration database. However, inasmuch as Guy teaches that "[t]he call request packet *includes* an indication as to whether 520 a call priority is to be requested" (Guy, col. 11, lines 50-51; emphasis added), Guy clearly teaches against the concept of

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retrieving a guaranteed level of service parameter associated with the calling party from a routing and administration data base. More importantly, the Examiner provides absolutely no motivation for one of ordinary skill in the art to have modified Turock with this alleged teaching of Guy.

For at least these reasons, claim 5 is allowable over the cited prior art.

C.   Issue No. 5: "Session Identifier"

The Examiner rejected claims 8-10 and 12-16 under 35 U.S.C. §103(a) in light of Turock, as modified by Guy and Rosenberg. Claim 9-10 and 12 depend from claim 8, which recites "generating a session identifier identifying a call attempt between the calling party and the called party." Claims 14-16 depend from claim 13, which similarly recites "receiving at the first telephony server first data packets carrying an identifier for the established communication link."

Further, the Examiner rejected claims 20-21 (and, as noted above in note 1, presumably intended to reject claim 22) and 28-29 under 35 U.S.C. §103(a) in light of Turock, as modified by Hogan, Guy and Rosenberg. Claims 21-22 and 28-29 depend from claim 20, which includes the limitation of "in a first telephony server connected to a first telephone system, receiving via a wide area packet switched network a first data packet transmitted by a second telephony server of a second telephone system, the first data packet having . . . (2) a session identifier."

Further, the Examiner rejected independent claim 30 under 35 U.S.C. 103(a) in light of Turock, as modified by Rosenberg. Claim 30 recites the step of "generating a session identifier identifying a call attempt between the calling party and the called party" and transmitting that session identifier between the two telephony servers.

The Examiner concedes that neither Turock, Yang, Guy, nor Hogan disclose a session ID and channel ID. In each of the afore-mentioned claim rejections, the Examiner relies on Rosenberg to allegedly cure that deficiency.

While Rosenberg references a "channel identifier" (*e.g.,* Rosenberg, 5: 54-6:31), Rosenberg does not disclose a "session identifier", as recited in claims 8, 20 and 30. As is clear from claim 8, which explicitly recites that the session identifier identifies "a call attempt between the calling party and the called party", the session identifier relates not

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to a communications channel but to a particular call session. The "channel identifier" in Rosenberg identifies a particular communication channel, but does not correspond necessarily to a particular call attempt or call session. In fact, as explained below, in most cases Rosenberg's channel ID will be related to multiple call attempts. Further, Rosenberg does not suggest sending a session identifier in a data packet to a telephony server, as required by claims 8, 13, 20, and 30.

The Examiner argues that "Rosenberg discloses a channel ID which reads on session identifier for a call attempt 'attempt only one' between the called and calling party." (October 2003 Office Action, pages 11-12.) However, this unsupported assertion simply does not demonstrate that Rosenberg reads on the limitation of a "session identifier identifying a call attempt between the calling party and the called party." Rosenberg teaches keeping multiple connections open simultaneously, and further teaches that these connections can be re-used by different calls. (Rosenberg, 5:44-47.) Thus, when Rosenberg teaches a channel identifier identifying a particular communications channel, that identifier need not, and probably does not, correspond to a particular call attempt. Rosenberg is very clear that the disclosed channel identifier does not identify a particular call session: "channel IDs will be re-used as various users initiate and terminate their telephone calls." (Rosenberg, 5: 45-47.) Rosenberg's channel ID is plainly incapable of functioning as a session identifier.

These are additional reasons why claims 8-10 and 12-16, 20-22, 28-29, and 30-34 should be allowed over the cited prior art.

D.   Issue No. 6: "Assigned Trunk Line Based On The Identifier"

Claim 13, rejected under 35 U.S.C. §103(a) in light of Turock, as modified by Guy and Rosenberg, recites "forwarding the received communication samples to the first central office on an assigned trunk line based on the identifier."

In their paper filed August 11, 2003, Appellants noted that the prior art of record does not disclose the sending of "communication samples" and the forwarding of those samples to the first central office on "an assigned trunk line based on the identifier". The Examiner then took the position that Turock, Guy, and Rosenberg "implicitly disclose[] this step otherwise the communication signal cannot transmit to the central office as

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claim[ed]." (October 2003 Office Action, page 12.) The Examiner's position is unfounded. Regardless of whether the communication signal requires a trunk line to transmit to the central office, this is not the same as "an *assigned* trunk line based on *the identifier*." Appellants can think of no reason – and the Examiner supplies none – why a trunk line could not be used without having been assigned based on an identifier. The prior art of record simply does not teach or suggest the afore-mentioned limitation of claim 13, nor is it required by the operation of the references.

For at least these reasons, claim 13, as well as claims 14-16 depending therefrom, are allowable over the cited art.

E.   Issue No. 7: "Predetermined Communication Path" (Claims 20-22)

The Examiner rejected claims 20-21 (and presumably intended to reject claim 22) and 28-29 under 35 U.S.C. §103(a) in light of Turock, as modified by Hogan, Guy and Rosenberg. Dependent claims 21 and 22 both recite a "predetermined communication path", which, as discussed above, is not disclosed by either Turock or Guy.

In the October 2003 Office Action, the Examiner argued (page 12) that both Guy and Rosenberg teach a predetermined communication path with respect to claims 21 and 22. Appellants addressed this argument above with respect to Guy. Further, the cited portion of Rosenberg teaches keeping a connection open for multiple voice calls between locations (Rosenberg, 3: 24-28), *not* using a predetermined communication path for a call between two particular telephony servers. Rosenberg teaches that, if a channel is already open between the source and destination of a particular call, the call will use that channel. (Rosenberg, 4: 45-52.) However, the route taken by packets between the source and the destination is not pre-determined; rather, channels are established as needed and then kept open as long as they are being used for any call. (Rosenberg, 4:35-52; 5: 44-47.)

The present invention, in contrast, uses predetermined, *i.e.,* statically established, paths. Appellants' specification (page 34: 6-16) explains that

> a complete virtual path having a predetermined bandwidth between
> two ITSs 72 can be established by forming a sequence of routers,
> each having predetermined path segments for transporting data
> packets along the virtual path to the next router or node. The
> virtual path is initially arranged by contracting with the Internet
> service provider controlling each router 84' and any associated

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> Autonomous System (AS) with the table 92 to guarantee the
> desired bandwidth along the virtual path.

Thus, Appellants' specification makes clear that a predetermined communications path is one which has been statically determined and programmed before any call is ever made between two points in the network. Rosenberg, in contrast, teaches that a call uses whatever channel happens to be open between two nodes in the network, or uses whatever channel is newly established for the call. Clearly, Rosenberg does not teach the *predetermined communication path* recited in Appellants' claims.

For at least this reason, claims 21-22 are allowable over the cited prior art. Further, claims 20 and 28-29 are allowable at least for the reasons discussed above regarding the failure of Rosenberg to teach the session identifier recited in claim 20.

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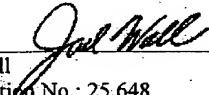Attorney Docket No.: 00-VE22.07A

IX. CONCLUSION

In view of the foregoing arguments, Appellants respectfully submit that the pending claims are novel over the cited references. The Examiner's rejection of Claims 1-10, 12-22 and 28-37 is improper because the prior art of record does not teach or suggest each and every element of the claimed invention. In view of the above analysis, a reversal of the rejections of record is respectfully requested of this Honorable Board.

Appellants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 07-2347, under Order No. 00-VE22.07A from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged to the above account.

Dated: December 7, 2004   Respectfully submitted,

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